

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 01-0120P
Gross and Adjusted Gross Income Tax
Calendar Years Ended 1995, 1996, 1997, and 1998**

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ISSUE(S)**I. Tax Administration – Penalty**

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was assessed a negligence penalty because it underreported its tax by 56% for 1995 and 25% for 1996 the majority of which arose from the reclassification of gains from the sale of divisions to business income. The sale of a company's operating division is clearly business income. The balance of the assessment arose from the throwback sales. Taxpayer correctly included these sales in Calendar Years 1997 and 1998 but made no effort to correct the prior years' returns.

I. Tax Administration – Penalty**DISCUSSION**

Taxpayer merely states that the increase was due to a Revenue Agent's Audit and not willful neglect and there was no negligence or willful disregard for the tax provisions.

The penalty was assessed in this instance because the Taxpayer failed to include its gain from the sale of its divisions in adjusted gross income. Taxpayer incorrectly classified these sales as nonbusiness income. Taxpayer correctly included these sales in 1997 and 1998 but made no effort to correct the prior years' returns. Taxpayer also failed to correctly report all Indiana sales in Gross Income.

Taxpayer has not provided reasonable cause to allow a waiver of the penalty.

FINDING

Taxpayer's protest is denied.